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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

and

COMMUNICATIONS WORKERS OF
AMERICA, DISTRICT 9, AFL-CIO;
COMMUNICATION WORKERS OF
AMERICA

and

AIRTOUCH CELLULAR

and

COMMUNICATIONS WORKERS OF
AMERICA, DISTRICT 9, AFL-CIO;
COMMUNICATION WORKERS OF
AMERICA

Cases 21-CA-075867
21-CA-098442

Case 21-CA-115223

MOTION FOR RECONSIDERATION

The Charging Party moves the Board for an order granting reconsideration of its Supplemental Decision and Order dated July 22, 2020. Member McFerran is now a member of the Board, and this will give her an opportunity to dissent. Additionally, the time it takes for the Board to consider this motion and perhaps deny it, will just mean further delay. This will give

the Charging Party an opportunity to petition for review in the Court of Appeals and allow a new Board appointed by President Biden to recall the case before the certificate of record is filed. At that point, the new Board can reverse this and the other related cases.

The Motion for Reconsideration is based upon the Board's erroneous refusal to consider the fact that this employer allows and encourages the employees to use the IT systems to communicate about wages, hours and other terms and conditions of employment. Furthermore, both the employer and the employees used the IT systems regularly to communicate about wages, hours and working conditions. As a result, there is no business justification for further limiting the use since the employer already grants and sanctions use. The rules that are at issue in this case are fundamentally ignored because of the open and notorious use by employees and the employer of the IT systems for communication about wages, hours and working conditions. This is just blatant discrimination to have an unenforced rule that has no business justification.

The Board, on May 29, issued a decision, which holds that solicitation has a broad meaning. *Wynn Las Vegas, LLC*, 369 NLRB No. 91 (2020). The Board ruled that a narrow definition of solicitation that employer could prohibit was inconsistent with the balancing of rights under section 7. It adopted a broad definition of soliciting and referred to a dictionary definition from the "Merriam Webster" online dictionary defining solicitation. It incorporated that definition of solicitation as "'The practice or act or an instance of soliciting,' and it defines 'solicits' as 'to approach with a request or plea' or 'to urge (something, such as one's cause) strongly.'"

Having adopted this broad definition of soliciting, solicitation encompasses the primary activity of sales persons and others who work under the Code of Conduct, which is to solicit all of the time from customers.

The rule at issue doesn't narrowly define solicitation as, for example, soliciting another employee for outside organizations. It is written in terms of any solicitation. It doesn't, for example, further limit solicitation only to soliciting other employees. If the employer actively

allows and requires solicitation, it cannot at the same time prohibit it. Perhaps this Board doesn't care about consistency.

The Board should grant the Motion for Reconsideration and allow the Charging Party to put on evidence of the widespread, unlimited and open use of the IT systems for communication about wages, hours and working conditions during working time and during non-working time. This would include solicitation by the employees all throughout the work day.

Dated: August 18, 2020

Respectfully submitted,

By: /s/ David A. Rosenfeld
DAVID A. ROSENFELD

Attorneys for Charging Party

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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On August 18, 2020, I served the following documents in the manner described below:

MOTION FOR RECONSIDERATION

- ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 18, 2020, at Alameda, California.

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/s/ Katrina Shaw

Katrina Shaw